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25-OMD-103

April 15, 2025

In re: Rob Mattheu/Oldham County Fiscal Court

**Summary:** The Oldham County Fiscal Court (“the Fiscal Court”) violated the Open Meetings Act (“the Act”) when it discussed public business in closed session. KRS 61.810(1)(g) does not authorize closed discussions of a proposal from a business entity, on the grounds that open discussions would jeopardize the siting of the business, when the location of the project is known to the public.

***Open Meetings Decision***

Rob Mattheu (“Appellant”) submitted a complaint alleging the Fiscal Court violated the Act at its regular meeting on April 1, 2025. At that meeting, the Fiscal Court held a closed session under KRS 61.810(1)(g) to discuss a proposal by Western Hospitality Partners, Kentucky, LLC (“Western Hospitality”) to construct a data center on a site in Oldham County. Specifically, the Appellant claimed the exception to the Act under KRS 61.810(1)(g) did not apply because no representative of a business entity was present in the closed session, the Fiscal Court had no role “in making decisions about any facet of this project,” and the siting of the business had “already been decided upon and publicly presented” prior to the meeting. As a remedy for the alleged violation, the Appellant requested that the Fiscal Court make public its discussions in closed session and issue a public apology.

In a timely response, the Fiscal Court denied it had violated the Act. Specifically, the Fiscal Court stated KRS 61.810(1)(g) was applicable “because the Fiscal Court has the ability to offer a reduction in the insurance premium tax as an incentive to [a] business which considered locating in Oldham County” and “is not required to make public any negotiated amounts until after an agreement is reached and accepted by a prospective employer.” This appeal followed.

Under KRS 61.810(1), “[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times,” subject to certain

exceptions. Among these exceptions is KRS 61.810(1)(g), which exempts “[d]iscussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business.”

The Appellant claims a public agency’s “discussions concerning a specific proposal” from a business entity are not exempt under KRS 61.810(1)(g) unless they are “discussions between a public agency and a representative of a business entity.” It is well established, however, that discussions may be held in closed session concerning a specific proposal, “with or without the representative” of the business entity present, if the statutory conditions apply. 23-OMD-078 (quoting 05-OMD-148); *see also* 16-OMD-129; 03-OMD-089; 99-OMD-104; 94-OMD-119. Thus, KRS 61.810(1)(g) applies to “discussions concerning a specific proposal” from a business entity, even when a representative of the business is not present, so long as open discussion of such a proposal “would jeopardize the siting, retention, expansion, or upgrading of the business.”

Here, the Appellant argues the conditions were not present for KRS 61.810(1)(g) to apply because the Fiscal Court has not shown how “open discussions would jeopardize the siting, retention, expansion, or upgrading of the business.” On appeal, the Fiscal Court claims open discussions would jeopardize the siting of the data center, and asserts “siting” should be defined as “[a] series of steps taken in order to choose the location for a facility or firm.” However, the Fiscal Court admits that Western Hospitality, prior to the April 1 meeting, had chosen a location for the project and “recently announced [that] location.” Furthermore, the Appellant has provided extensive documentation showing the public’s awareness of the project location prior to the meeting.<sup>1</sup>

Under KRS 61.800, “the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.” Accordingly, the Office has consistently interpreted KRS 61.810(1)(g) as applicable “only if open discussion would jeopardize the business entity’s *undisclosed* interest in siting, retention, expansion, and/or upgrading of the business” in a certain location. 05-OMD-148 (emphasis added); *see also* 03-OMD-089. Thus, discussions may not be held in closed session under KRS 61.810(1)(g) when “the public knows the project’s location.” 22-OMD-057. Here, the Appellant has provided ample evidence that the planned location of the data center was known to the general public.

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<sup>1</sup> This documentation includes a press release sent from The Rotunda Group to the County Judge/Executive on March 28, 2025; numerous complaints from residents objecting to the location of the project, emailed to county government officials between March 29 and March 31, 2025; and a WDRB News article dated March 31, 2025, which shows and describes the exact location proposed for the data center.

The Fiscal Court argues it has an interest in negotiating “possible incentives” for the project, including “a reduction in certain taxes,” as well as determining “whether this is an appropriate site and how County government deals with that through the applicable zoning codes.” Additionally, the Fiscal Court claims it has “legal questions as to the process to be followed by the Office of Planning and Development,” as well as “questions [about] why the matter was referred to the Board of Adjustments and Appeals for a Conditional Use Permit and [sic] opposed to the Planning Commission and then the Fiscal Court for a zone change.” Although those matters may indeed be within its purview, the Fiscal Court cites no exception under the Act that authorizes it to conduct such discussions in closed session when the location of the project is already known to the public. Thus, in 94-OMD-119, a city commission violated the Act when it held closed discussions under KRS 61.810(1)(g) to negotiate an incentive package after “the business involved [had] already publicly announced . . . that it [was] locating in the area.” Here, likewise, the Fiscal Court was not entitled to rely on KRS 61.810(1)(g) to discuss possible financial incentives or related procedural matters when the location for the data center project was publicly known. Therefore, the Fiscal Court violated the Act when it discussed public business in closed session without specific authority under the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). The Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
Attorney General

/s/ James M. Herrick  
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